Supreme Court, U.S.
FILED
APR 5 1991
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(2)

No. 90-1399

In The

Supreme Court of the United States

October Term, 1990

SOUTHERN LIFE AND HEALTH INSURANCE COMPANY and RICHARD PERRY,

Petitioners,

v.

LUCY R. TURNER,

Respondent.

Petition For Writ Of Certiorari To The Supreme Court Of Alabama

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether this Court should review for constitutional excessiveness a $500,000 punitive damages award reduced from $5,000,000 pursuant to post-verdict procedures deemed constitutionally acceptable under the Due Process Clause of the Fourteenth Amendment in *Pacific Mutual Life Insurance Co. v. Haslip,* No. 89-1279 (U.S. Mar. 4, 1991).

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STATEMENT OF THE CASE

Southern Life sold to Lucy R. Turner in 1985 a $1,500 policy insuring the life of an aunt living with her at the time. Turner, the designated beneficiary, paid the premiums on this policy, App. A, 2a, 571 So.2d, at 1016.

After her aunt died in October 1986, Turner notified Richard Perry, the Southern agent assigned to service her policy; she testified that he "came by her home in November 1986 and gathered all of the documents in

[her] possession that related to the policy." Perry denied that he took the policy documents, and he insisted that "he told Turner that he could not file a claim on the policy because it had lapsed." *Id.*, at 3a, 571 So.2d, at 1016.

In March 1987, Turner inquired about the status of her claim at Southern's district office and was told that the company "had no record of the . . . policy or of her claim." *Id.*, at 3a, 571 So.2d, at 1016. Turner testified that Perry visited her home the following month and "told her that Southern did not have $1,500 to pay her claim, but that he and his 'boss man' had agreed to pay Turner $500 a month for three months to satisfy her claim." *Id.* Perry denied this occurrence. He also denied Turner's testimony of his visit the following month and payment to her then of $500 in $20 bills; Turner's testimony concerning the latter visit was corroborated by a son and a family friend. *Id.*, at 3a, 571 So.2d, at 1017.

The family friend accompanied her the next day to the Office of the Alabama Insurance Department in Montgomery; there, "she told Michael DeBellis of the Consumer Protection Division about her problems with Perry and Southern and showed him the envelope containing $500." *Id.*

Turner's fraud action against Southern Life and Perry, filed on June 8, 1987, alleged "that . . . Perry accepted insurance premiums . . . and converted those premiums to his own use, and concealed that fact from [Turner], thereby causing the policy of insurance to lapse and be out of benefit when the insured died." Instructed by the trial court that it could award only $1,000 as compensatory damages, App. H, 49a, the jury returned a $5,000,000 verdict against the Petitioners.

The trial court directed a $4,500,000 remittitur and detailed its reasons in an Order required by Alabama's review procedures for punitive damage awards. App. C, 16a-19a. Respondent accepted the remittitur, and petitioners appealed. The Supreme Court of Alabama affirmed the trial court's award on September 21, 1990. Judgment has been stayed pending this certiorari proceeding.

REASONS FOR DENYING THE WRIT

Respondent respectfully submits that the Petition for Certiorari should be denied for reasons that follow.

A. THE RECORD SHOWS THAT THE TRIAL COURT APPLIED ALABAMA'S STANDARDS FOR SCRUTINIZING THE SIZE OF VERDICTS FOR PUNITIVE DAMAGES.

Petitioners misstate the factual record in contending that the trial court did not adhere to the standards developed by the Alabama Supreme Court for reviewing punitive damage verdicts. To explain its substantial remittitur of the jury's $5,000,000 verdict, the trial court examined precisely the three factors identified in *Hammond v. City of Gadsden*, 493 So.2d 1374, 1379 (Ala. 1986) as "appropriate for the trial court's consideration" but "by no means exclusive . . . the culpability of the defendant's conduct . . . the desirability of discouraging others from similar conduct . . . the impact upon the parties."[1]

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[1] In *Green Oil v. Hornsby*, 539 So.2d 218, 223-224 (Ala. 1989), seven additional considerations were outlined, including three which elaborated on the *Hammond* factors:

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The trial court referred to these factors as "the enormity of the wrong, the culpability of the wrongdoers, and the necessity for preventing similar wrongs in the future", App. C, 18a. Petitioners' attempt to portray the trial court's references as "subjective criteria" falling short of the *Hammond* factors is vacuous. Petition for Certiorari, at 10-11.

That the trial court understood and applied the *Hammond* factors is evident from its analysis of the relevant proof:

> Addressing the facts of the case, defendant Perry, in effect, stole insurance premiums and caused the policy to lapse. This was a clear-cut, egregious fraud. On the other hand, when confronted with this fraud, defendant Perry paid to

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(1) Punitive damages should bear a reasonable relationship to the harm that is likely to occur from the defendant's conduct as well as to the harm that actually has occurred. If the actual or likely harm is slight, the damages should be relatively small. If grievous, the damages should be much greater.

(2) The degree of reprehensibility of the defendant's conduct should be considered. The duration of this conduct, the degree of the defendant's awareness of any hazard which his conduct has caused or is likely to cause, and any concealment or 'cover up' of that hazard, and the existence and frequency of similar past conduct should all be relevant in determining the degree of reprehensibility.

(3) If the wrongful conduct was profitable to the defendant, the punitive damages should remove the profit and should be in excess of the profit, so that the defendant recognizes a loss.

> plaintiff $500 of the $1,500 death benefit provided by the policy, and agreed to pay the $1,000 balance in monthly installments of $500 each. . . . While this conduct does not excuse the fraud, it serves to mitigate the punitive damages to be awarded on account of the fraud. With respect to defendant Southern Life, suit was filed shortly after it was given notice of plaintiff's complaint, and that fact tends to mitigate defendant Southern Life's culpability.
> App. C, 18a.

Any further doubt that the trial court applied the proper standards in reviewing the jury's verdict should be dispelled by the record of this trial court's familiarity with those standards. In *Green Oil v. Hornsby*, this trial court remitted a $150,000 award of punitive damages by $125,000, largely because of its financial effect upon the defendant, a factor not enumerated in *Hammond*. Affirming the trial court's rationale, the Alabama Supreme Court included "the financial position of the defendant" with six additional considerations to guide the trial court in determining the excessiveness or inadequacy of punitive damages. *Hornsby*, 539 So.2d, at 221, 223-224.

Approximately two months after the *Hornsby* decision, the Alabama Supreme Court decided three other cases involving judicial scrutiny of punitive awards for excessiveness: *United American Ins. Co. v. Brumley*, 542 So.2d 1231 (Ala. 1989), decided March 10, 1989; *United Services Auto. Ass'n. v. Wade*, 544 So.2d 906 (Ala. 1989) and *State Farm Mut. Auto. Ins. Co. v. Robbins*, 541 So.2d 477 (Ala. 1989), each decided March 17, 1989. In *Robbins*, an insurance fraud case before the same trial judge involved in this case, the Alabama Supreme Court affirmed the reduction of another $5,000,000 jury verdict to $500,000.

In sum, the record is clear that the trial court knew, appreciated, and applied Alabama's guidelines for evaluating the excessiveness of punitive damage verdicts. Equally clear is the fact that the Petitioners were afforded a reasonable opportunity to influence the size of the remittitur but neglected to offer any proof to buttress their claim of excessiveness. For example, Petitioners offered no evidence of how their financial status would be adversely affected by the verdict or any specific remittitur. Consequently, the trial court properly weighed the evidence by reference to the relevant *Hammond* and *Hornsby* guidelines and, in determining the amount of punitive damages necessary to deter other "clear-cut, egregious frauds", the trial court accorded reasonable deference to the message implicit in the jury's $5,000,000 verdict.

B. THE ALABAMA SUPREME COURT'S EXEMPLARY RECORD FOR DEVELOPING, REFINING, AND APPLYING STANDARDS FOR MEANINGFUL REVIEW OF AWARDS FOR PUNITIVE DAMAGES WARRANTS THE PRESUMPTION THAT IT APPLIED THOSE STANDARDS IN AFFIRMING THE REMITTITUR IN THIS CASE.

Because the Alabama Supreme Court's opinion does not address specifically Petitioners' claims of excessiveness and unconstitutionality of the punitive damages award, Petitioners conclude that the Court "did not engage in any apparent analysis of the appropriateness or the size of the award." Petition for Certiorari, at 12. For this Court to lend credence to such conjecture requires it to ignore first its own admonition that " . . . judges are presumed to know the law and to apply it in making their

decisions." *Walton v. Arizona*, 497 U.S. ___, 111 L.Ed.2d 511, 528 (1990).

Moreover, since the opinion of the Alabama Supreme Court, written by its Chief Justice, does refer to and declare its agreement with specific conclusions by the trial court in its *Hammond* Order, App. A, 9a-9b, 571 So.2d, at 1019, it is unreasonable not to believe that the Court considered and concurred with the trial court's reasons for finding the $5,000,000 jury verdict excessive and reducing it to $500,000. That belief is buttressed by the fact that the opinion of Justice Maddox (concurring in part; dissenting in part) does address specifically the legal principles implicated by the punitive damages award. *Id.*, at 11a-13a, 571 So.2d, at 1020-1021.

Adopting Petitioners' conclusion requires this Court also to ignore the Alabama Supreme Court's exemplary record for establishing and monitoring procedures to ensure that punitive damages do not "exceed an amount that will accomplish society's goals of punishment and deterrence." *Hornsby*, 539 So.2d, at 222. Prior to affirming the trial court's substantial remittitur in this case, the Alabama Supreme Court consistently demonstrated its adherence to the principles expressed in *Hornsby*.[2]

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[2] The Court had affirmed the trial court's refusal to order remittiturs of punitive damages in four cases: *United American Ins. Co. v. Brumley*, 542 So.2d 1231 (Ala. 1989) [$1,000,000 award]; *Vintage Enterprises, Inc. v. Jaye*, 547

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CONCLUSION

The Alabama Supreme Court's exemplary record for scrutinizing awards of punitive damages makes it particularly inappropriate for this Court to vacate an affirmance of a substantial remittitur made pursuant to procedures already determined by this Court to satisfy constitutional due process. The Alabama Supreme Court's record clearly demonstrates that post-verdict procedures do "[ensure] that punitive damages awards are not grossly out of proportion to the severity of the offense and have some understandable relationship to compensatory damages". *Pacific Mutual Life Insurance Co. v. Haslip*, No. 89-1279 (U.S. Mar. 4, 1991), slip op., at 18-19.

Highlighting the disparity in this case between compensatory damages of $1,000 and the $500,000 award, Petitioners implore this Court to do what it declined to do in *Pacific Mutual*, "to draw a mathematical bright line between the constitutionally acceptable and the constitutionally unacceptable that would fit every case". *Id.*, at 15.

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So.2d 1169 (Ala. 1989) [$500,000 award]; *Porter v. Hook*, 554 So.2d 382 (Ala. 1989) [$1,000,000 award]; *HealthAmerica v. Menton*, 551 So.2d 235 (Ala. 1989) [$1,797,588 award].

In one case, *United Services Auto. Ass'n. v. Wade*, 544 So.2d 906, 915-917 (1989), the Alabama Supreme Court decided that the trial court's punitive award of $3,500,000 was excessive and should be reduced by $1,000,000. In two other cases, the Court affirmed the trial courts' substantial remittiturs of jury awards: *State Farm Mut. Auto. Ins. Co. v. Robbins*, 541 So.2d 477 (Ala. 1989) [reducing a $5,000,000 award to $500,000]; *Land & Assocs., Inc. v. Simmons*, 562 So.2d 140 (Ala. 1989) [reducing a $2.5 million award to $600,000].

The record here countenances otherwise because this award did not lack "objective criteria", *Id.*, at 20. As required by the Alabama Supreme Court, the trial court detailed its consideration of the objective standards promulgated to guide its review of the punitive damages award. By clear implication from the record as a whole, the award was also reviewed by the Alabama Supreme Court; having scrutinized a host of punitive verdicts, including this trial court's remittitur in the exact amount of the same verdict in a similar case, the Alabama Supreme Court necessarily engaged in a comparative analysis before affirming the remittitur.

Neither the Alabama Supreme Court's opinion in *Pacific Mutual* nor any of its opinions thereafter in cases challenging the propriety or size of punitive damages is in conflict with this Court's March 4, 1991 decision in *Pacific Mutual*. Consequently, remanding this case for further proceedings in light of *Pacific Mutual* would serve no useful purpose.

April 5, 1991

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